

**Amend Sections 43201 and 55061 of the Revenue and Taxation Code to make it clear that when the Board collects a tax or fee assessed by another state agency, that it is appropriate for the Board to issue a notice of determination as the billing mechanism. (Housekeeping)**

**Source: Legal and Investigations Department**

Existing Hazardous Substances Tax Law (Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code) is utilized by the Board of Equalization (Board) to administer and collect many different taxes or fees, including the Childhood Lead Poisoning Prevention Fee assessed by the Department of Health Services, and various "activity fees" (including permit application fees, permit modification fees and site remediation oversight fees) assessed by the Department of Toxic Substances Control. The terms "fee" and "tax" are used interchangeably in the collection provisions of the Hazardous Substances Tax Law.

In addition, under the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) the Board administers and collects the California Tire Fee, Ballast Water Management Fee, and the Natural Gas Surcharge. Effective January 1, 2004, the Fee Collection Procedure Law may also be used to administer and collect the Covered Electronic Waste Recycling Fee, Water Rights Fee, and the manufacturer and importer administration fee imposed under the Cigarette and Tobacco Products Licensing Act of 2003.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to be collected by the Board to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as provides the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Currently, the Hazardous Substances Tax Law and the Fee Collection Procedures Law specify in Sections 43201 and 55061, respectively, that a determination may be made if the Board is dissatisfied with the return filed or the amount of the fee paid to the state by any feepayer, or if no return has been filed or no payment of the fee has been made. This language assumes that the tax or fee will be remitted and reported on a return, and does not expressly allow the Board to issue a notice of determination when the amount to be collected is based on an assessment by another state agency, on a calculation by the Board, or on a fee amount fixed by statute for which no return is required to be filed.

This proposal would clarify that, under circumstances when the Board is authorized to collect a tax or fee that is either assessed by another state agency or calculated by the Board and collected for another state agency, or fixed by statute and collected by the Board without the requirement to file a return, it is appropriate for the Board to issue a notice of determination or other similar billing document for that purpose. This proposal would also correct typographical errors.

*Section 43201 of the Revenue and Taxation code is amended to read:*

43201. (a) If the board is dissatisfied with the return or report filed or the amount of tax paid to the state by any taxpayer, or if no return or report has been filed or no payment or payments of the taxes have been made to the state by a taxpayer, the board may compute and determine the amount to be paid, based upon any information available to it. In addition, where the board is authorized to collect a tax for another state agency, the board may issue a notice of determination or similar billing document for collection of the tax. One or more additional determinations may be made of the amount of tax due for one, or for more than one, period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the tax, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due ~~is made~~ is found to have been occasioned by negligence or intentional disregard of this part or authorized regulations, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided above.

(c) If any part of the deficiency for which a determination of an additional amount due ~~is made~~ is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the taxpayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the taxpayer at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, sub-post office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

*Section 55061 of the Revenue and Taxation code is amended to read:*

55061. (a) If the board is dissatisfied with the return filed or the amount of the fee paid to the state by any feepayer, or if no return has been filed or no payment of the fee has been made to the state by a feepayer, the board may compute and determine the amount to be paid, based upon any information available to it. In addition, where the board is authorized to collect a fee for another state agency, or where the board is authorized to collect a fee under circumstances where the feepayer is not required to file a return, the board may issue a notice of determination or similar billing document for collection of the fee. One or more additional determinations may be made of the amount of the fee due for one, or for more than one period. The amount of the fee so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is ~~made~~ is found to have been occasioned by negligence or intentional disregard of this part or authorized regulations, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(c) If any part of the deficiency for which a determination of an additional amount due is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the feepayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the feepayer at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, sub-post office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.